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No. 05-1365

IN THE

# Supreme Court of the United States

ROGER W. LONG, by and through his Mother, Guardian and Conservator, JACKLYNNE EVE LONG,
*Petitioner*,

v.

TITAN INSURANCE COMPANY,
a Michigan Insurance Company,
*Respondent.*

**On Petition for a Writ of Certiorari to the Supreme Court of Michigan**

## RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

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## COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Where the Courts of the State of Michigan have upheld a State statute of limitation against due process constitutional challenges, as bearing a reasonable relationship to a permissible legislative objective, should this Court defer to the decisions of the Michigan State Courts when dealing with State social and economic regulation in general and Michigan's No Fault automobile insurance system in particular?

## PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those listed in the caption.

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## RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

Respondent, Titan Insurance Company, by and through its attorneys, Law Offices of Ronald M. Sangster, PLLC by Ronald M. Sangster, Jr., respectfully prays that this Honorable Court deny Petitioner's request for the issuance of a Writ of Certiorari. This case involves an issue of State economic and social legislation, and the Michigan Courts have already upheld the applicable laws against Federal and State due process challenges. Therefore, this Court should not substitute its judgment for that of the Michigan State Courts.

## OPINIONS BELOW

Petitioner's suit was initially filed in the Circuit for the County of Oakland, State of Michigan. On Cross-Motions for Summary Disposition, the Honorable Wendy Potts, Judge of the Oakland County Circuit Court, issued an Opinion and Order on December 20, 2004. This Opinion is attached as Appendix C to the Petition for Writ of Certiorari. The Michigan Court of Appeals issued an unpublished decision affirming the decision of the Oakland County Circuit Court, and the Opinion of the Michigan Court of Appeals is attached as Appendix B to the Petition for Writ of Certiorari. The Michigan Supreme Court denied Petitioners' Application for Leave to Appeal on January 27, 2006, and this Order of the Michigan Supreme Court is attached as Appendix A to the Petition for Writ of Certiorari.

## JURISDICTION

Respondent takes issue with Petitioner's statement regarding the raising of Petitioner's constitutional arguments in the Michigan State Courts. Respondent concedes that Petitioner raised the issue of a potential due process violation in Petitioner's Response to Respondent's Motion for Summary Disposition and Counter-Motion for Partial Summary Disposition, filed with the Oakland County Circuit Court on November 23, 2004. In doing so, however, Petitioner referenced only *Michigan* Supreme Court decisions, including *Chase v Sabin*, 445 Mich 190, 516 NW2d 60 (1994) and *Grubaugh v City of St. Johns*, 384 Mich 165, 180 NW2d 778 (1970). No Federal decisions were referenced, and this Court can reasonably assume that Petitioner intended to raise only *State* due process issues, not *Federal* due process issues. This Court will defer to State Court decisions interpreting State Constitutional provisions, even where the language utilized in the State and Federal Constitutions are similar. See e.g. *PruneYard Shopping Center v Robins*, 447 U.S. 74 (1980).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the Constitution of the United States provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const.* Amendment XIV § 1.

The Constitution of the State of Michigan contains a similar provision. Article 1, § 17 provides:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Michigan's Automobile No-Fault Insurance Act, MCL 500.3101 et seq., provides a one year statute of limitations for filing an action to recover automobile no-fault insurance benefits. MCL 500.3145(1) provides:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than one year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not

> recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

Michigan law does contain a provision to toll certain statutes of limitations. MCL 600.5851(1) provides:

> If the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run.

However, Michigan courts have recently held that this section does not apply to causes of action arising under the Michigan No-Fault Insurance Act, by virtue of a 1993 amendment which restricted the tolling mechanism to causes of action arising under the Revised Judicature Act, MCL 600.1 *et. seq.* only. *Cameron v ACIA*, 263 Mich App 95, 687 NW2d 354 (2004). The constitutionality of the 1993 amendment to Revised Judicature Act has been upheld by the Michigan Court of Appeals. *Hatcher v State Farm*, 269 Mich App 596, 712 NW2d 744 (2005).

## STATEMENT OF THE CASE

On May 29, 2001, Petitioner was operating his motorcycle in the City of Royal Oak, Michigan when he apparently lost control of the motorcycle. As a result, Petitioner was thrown from the motorcycle and struck a No Parking sign. As a result of this accident, Petitioner suffered admittedly serious injuries.

Michigan is a no-fault insurance state. At the time of this accident, Respondent Titan Insurance Company was Petitioner's *automobile* no-fault insurer. Under Michigan law, injuries suffered in motorcycle accidents, without the involvment of an automobile, are not compensable under Michigan's no-fault insurance system. See MCL 500.3101(2) (d). However, accidents involving motorcycles *and automobiles* are compensable under the No-Fault Insurance Act. See MCL 500.3101(2) (f). The investigation carried out by the City of Royal Oak Police Department indicated that by all accounts, the accident simply involved Petitioner's motorcycle, with no involvement of an automobile. Therefore, Petitioner's injuries would not be compensable under Michigan's no-fault system.

Two and a half years after the loss occurred, Petitioner's family obtained counsel who conducted an investigation into how the loss occurred. Counsel apparently contacted an individual who came upon the scene of the occurrence and noticed a lady standing outside of a mini-van, who allegedly told this individual that she inadvertently cut off the motorcyclist. At that point, two and a half years after the loss, Petitioner's counsel notified Respondent Titan Insurance Company, and requested payment of Michigan No-Fault Insurance benefits to Petitioner.

The Michigan No-Fault Insurance Act contains a one year notice provision. See MCL 500.3145(1). The parties concede that Respondent, Titan Insurance Company, did not receive notice of Petitioner's claim within the one year statutory period. Accordingly, Respondent denied Petitioner's claim for benefits by way of written correspondence dated October 23, 2003.

## I. THE UNDERLYING LITIGATION

### A. Proceedings in the Oakland County Circuit Court

On November 7, 2003, Petitioner filed suit against Respondent in the Oakland County Circuit Court in the State of Michigan. Following discovery, Respondent filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(10). In its motion, Respondent noted that the one year notice provision set forth in MCL 500.3145 is a statute of limitation, not a mere notice provision. Respondent also pointed out that pursuant to a recently decided case from the Michigan Court of Appeals, *Cameron v ACIA*, 263 Mich App 95, 687 NW2d 591 (2004), lv granted 472 Mich 899 (2005), Petitioner's alleged "insanity" would not toll the one year statute of limitations set forth in MCL 500.3145, since the "insanity" tolling provision found in MCL 600.5851(1) applied *only* to causes of action arising under Michigan's Revised Judicature Act.

On November 2, 2004, Petitioner filed a Response to Respondent's Motion for Summary Disposition, as well as a Counter-Motion for Partial Summary Disposition. In the response, Petitioner raised a vague due process challenge to the "inflexible application" of the one year statute of limitations set forth in MCL 500.3145, citing two Michigan Supreme Court decisions, *Chase v Sabin*, 445 Mich 190, 516 NW2d 60 (1994) and *Grubaugh v City of St. Johns*, 384 Mich 165, 180 NW2d 778 (1970). Petitioner failed to identify whether the due process challenge was based upon the provisions of the U.S. Constitution, or the Constitution of the State of Michigan.

Respondent then filed a Reply Brief, noting that the Michigan Court of Appeals had previously upheld the one year statute of limitations set forth in MCL 500.3145 against equal protection and due process challenges. See *Dolson v Secre-*

*tary of State*, 83 Mich App 596, 269 NW2d 239 (1978), *Rawlins v Aetna*, 92 Mich App 268, 284 NW2d 782 (1979). and *Davis v Farmers*, 86 Mich App 45, 272 Mich App 334 (1978).

The Honorable Wendy Potts of the Oakland County Circuit Court conducted oral argument on the motions on December 15, 2004. Two days later, Judge Potts issued an Opinion and Order granting Respondent's Motion for Summary Disposition. In its Opinion, the Court rejected Petitioner's constitutional challenges, citing *Dolson, supra*. The Opinion and Order of the Oakland County Circuit Court is attached as Appendix C to the Petition for Writ of Certiorari.

### B. Judgment of the Michigan Court of Appeals Affirming the Lower Court's Decision

Petitioner filed a timely Claim of Appeal with the Michigan Court of Appeals. Briefs were filed by both sides and, once again, the constitutional arguments were only raised briefly. Following oral argument, the Michigan Court of Appeals issued an unpublished decision on June 15, 2005, affirming the decision of the Oakland County Circuit Court. In doing so, the Court of Appeals rejected Petitioner's constitutional arguments, again citing *Dolson, supra; Chase, supra* and *Bissel v Kommareddi*, 202 Mich App 578, 509 NW2d 542 (1993). The Court noted that:

> This Court has held that 'statutes of limitation are to be upheld [against due process challenges] unless it can be demonstrated that their consequences are so harsh and unreasonable that they effectively divest plaintiffs of the access to the courts intended by the grant of a substantive right.' *Bissell v Kommareddi*, 202 Mich App 578, 581, 509 NW2d 542 (1993). In the present case, plaintiff had a year to either sue or notify defendant of Long's accident. Additionally, under §3145, complying with the notice provision would have allowed plaintiff to sue 'within 1 year after the most recent allowable

> expense' although limiting recovery to damages incurred within a year before filing suit. The provisions of the statute are not so harsh and unreasonable as to effectively divest plaintiff of access to the courts. Accordingly, the trial court did not err in finding that §3145 did not deprive plaintiff of due process. *Long v Titan*, Michigan Court of Appeals' Docket No. 260113, rel'd June 14, 2005, slip opinion at page 3.

A copy of the unpublished opinion from the Michigan Court of Appeals is attached as Appendix B to the Petitioner for Writ of Certiorari.

### C. Michigan Supreme Court's Order Denying Application for Leave to Appeal

Petitioner filed an Application for Leave to Appeal with the Michigan Supreme Court. On January 27, 2006, the Michigan Supreme Court issued an Order Denying Petitioner's Application for Leave to Appeal. Two Michigan Supreme Court Justices would have granted leave to appeal. The Order Denying Petitioner's Application for Leave to Appeal is attached as Appendix A to the Petition for Writ of Certiorari.

## REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

### I. BECAUSE THE ONE YEAR STATUTE OF LIMITATIONS SET FORTH IN MCL 500.3145 BEARS A REASONABLE RELATIONSHIP TO A PERMISSIBLE LEGISLATIVE OBJECTIVE, THE STATUTE AT ISSUE SURVIVES PETITIONER'S DUE PROCESS CHALLENGE.

Michigan Courts have long held that the one year notice provision contained in MCL 500.3145(1) is a statute of limitations, not a mere notice provision. See *Davis, supra.* Michigan courts have further held that oral notice of a no-

fault insurance claim is insufficient because the statute requires that *written notice* be filed within one year from the date of injury. *Keller v Losinski*, 92 Mich App 468, 285 NW2d 334 (1979). The purpose of the one year notice provision is to allow a no-fault insurer to timely investigate the circumstances of the loss. *Attorney General v State Farm*, 160 Mich App 57, 408 NW2d 109 (1987). The statute is also designed to protect against stale claims and protracted litigation, especially involving issues of insurance coverage such as the case at bar. *Pendergast v American Fidelity Fire Ins. Co.*, 118 Mich App 838, 325 NW2d 602 (1982).

In considering whether or not a particular statute satisfies due process concerns, Michigan courts have ruled that the statute must bear a reasonable relationship to a permissible legislative objective. *Phillips v Mirac, Inc.*, 470 Mich 415, 685 NW2d 174 (2004). MCL 500.3145 certainly has a permissible legislative objective—to protect against stale claims and to give a no-fault insurer timely notice of the loss, so that it can investigate the claim. The purpose of the one year notice provision is illustrated by the circumstances in the case at bar, wherein a timely determination of whether or not an *automobile* was involved in what otherwise appeared to be a single motorcycle accident was *absolutely necessary* before determining the issue of coverage. By waiting two and a half years before notifying Respondent, Petitioner effectively deprived Respondent of an opportunity to investigate the circumstances surrounding this loss, while evidence remained undisturbed and memories were fresh. As pointed out previously, Michigan courts have upheld the constitutionality of MCL 500.3145(1) against due process challenges. See *Dolson, supra*; *Davis, supra; and Rawlins, supra.* There is no basis for this court to disturb the well-established rulings of the Michigan courts on this issue.

Although not mentioned by Petitioner, Michigan law does provide for tolling of statutes of limitation under certain

circumstances, due to an injured person's alleged "insanity." MCL 600.5851(1) provides:

> Except as provided in (7) and (8) if the person first entitled to make an entry or bring an action *under this Act* is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run.

The highlighted language was added as part of a series of tort reform measures enacted in 1993. See 1993 PA 78, §1. In *Cameron, supra*, the Michigan Court of Appeals held that this tolling provision did not apply to causes of action arising under the Michigan No-Fault Insurance Act, MCL 500.3101 *et. seq.*, given the clear and unambiguous statutory language of the 1993 Tort Reform Amendments, which restricted the applicability of the tolling provision to actions arising "under this Act"; i.e., the Revised Judicature Act.

Recently, the Michigan Court of Appeals turned aside a due process challenge to MCL 600.5851(1), as amended by 1993 PA 78. In *Hatcher v State Farm*, 269 Mich App 596, 712 NW2d 744 (2005), the Michigan Court of Appeals rejected a due process challenge in a no-fault insurance context. In doing so, the court ruled:

> The federal and state constitutions provide that no person will be deprived of life, liberty or property without due process of law. To satisfy due process, the 1993 amendments to MCL 600.5851(1) must bear a reasonable relationship to a permissible legislative objective. As discussed above, the 1993 amendments which restrict the tolling provision to claims under the RJA are rationally related to protecting potential defendants and providing prompt recovery of damages. Furthermore, 'a statute of limitations is a procedural, not substantive rule,' which will be upheld unless a party demonstrates that it is so harsh and unreasonable in its consequences

> that it effectively divests 'plaintiffs of the access to the courts intended by the grant of the substantive right.' The amendments here are not so harsh and unreasonable that they effectively deny plaintiffs access to the courts. Therefore, we conclude that the amendments do not violate the due process safeguards of the federal or state constitution. *Hatcher*, 712 NW2d at 746.

Again, there is no basis for this court to disturb established Michigan jurisprudence on this issue.

This Court has taken a dim view of those plaintiffs who fail to timely exercise their legal rights. One of the cases cited by the Petitioner in his Application for Leave to Appeal to the Michigan Supreme Court, *Irwin v Department of Veterans Affairs*, 498 US 89 (1990) illustrates this point. In *Irwin*, plaintiff failed to comply with the thirty day notice provision to file suit against his employer on a charge of discrimination. This Court ruled that plaintiff's claim was untimely and that the equitable tolling doctrine did not apply under the circumstances of this case. In doing so, this Court commented on the types of situations where such tolling would be applied:

> But in examination of the cases in which we have applied the equitable tolling doctrine as between private litigants affords petitioner little help. *Federal Courts have typically extended equitable relief only sparingly.* We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or trick by his adversary's misconduct into allowing the filing deadline to pass. *We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. Baldwin County Welcome Center v Brown*, 466 US 147, 151 (1984). *Irwin,* 498 US at 96 (emphasis added)

We do not have a situation where Petitioner, in this case, filed suit in the wrong court. Nor are we dealing with a situation

where Respondent somehow induced or tricked Petitioner into allowing the filing deadline to pass. Rather, we have a situation where Petitioner simply "failed to exercise due diligence in preserving his legal rights." There are no due process violations in the case under consideration.

## CONCLUSION AND RELIEF REQUESTED

Based on the foregoing analysis, Respondent Titan Insurance Company respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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